

# **SUPREME COURT OF INDIA**

Aravindakshan Nair

Vs.

P. Lakshmi Ammal

C.A.No.2154 of 1999

(Shivaraj V. Patil and D. M. Dharmadhikari JJ.)

06.04.2004

## **JUDGMENT**

1. This appeal is by defendant No.5 in the suit. The suit filed for mandatory injunction was dismissed by the trial court. The first appeal filed by the plaintiff was also dismissed, but, the second appeal filed by the plaintiff was allowed by the High Court by the impugned judgment modifying the judgments and decrees passed by the courts below and a decree was passed for removal of the structure, as prayed for in the plaint and take possession of B Schedule property wherein the structure is found.

2. The learned counsel for the appellant, in the first place, urged that the High Court was not right and justified in disposing of the second appeal, that too upsetting the concurrent findings of both the courts below, without formulating any substantial question or questions of law, if arose for consideration between the parties. According to him, because of this infirmity the impugned judgment cannot be sustained having regard to the mandatory requirement of Section 100 of the Civil Procedure Code (for short, 'the CPC'), i.e, of formulating substantial question of law in a second appeal.

3. The learned Senior counsel for the respondents submitted that since the first appellate court did not examine the appeal in proper perspective and did not deal with the material placed on record, as the first appellate court was expected to do, the High Court, in the second appeal, after elaborate consideration of the respective contentions and in the light of the evidence placed on record, was right in modifying the judgments and decrees of the courts below. In short, the learned counsel submitted that the impugned judgment, on merits, can be sustained. He could not dispute that the second appeal was disposed of without formulating any substantial question or questions of law.

4. In the view we are proposing to take, we do not wish to consider the respective contentions on the merits. This Court has repeatedly ruled that as mandatorily required under Section 100 of the CPC essentially the High Court, before disposing of the second appeal, has to formulate substantial questions of law, if arise for consideration between the parties. A perusal of the impugned judgment shows that no such substantial question or questions of

law were formulated before disposing of the second appeal. This being the position, the impugned judgment cannot be sustained. On this short ground, without expressing one way or the other on the merits of the contentions of either party, the impugned judgment is set aside and the second appeal is remitted to the High Court for disposal after formulating substantial question or questions of law. All the contentions of the parties are left open to be urged before the High Court.

5. The appeal is allowed in the above terms. No costs.